IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.3325 OF 2006

Mrs.Pramila Rajkumar Yadav .. Applicant.

V/s.

Rajkumar Ramraj Yadav & Ors. .. Respondents.

Shri.Pankaj Das i/b.Rajesh S.Datar for the applicant.

Shri.H.T.Pawar for respondent Nos.1 to 3.

Smt.M.H.Mhatre, learned A.P.P. for respondent No.8-State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 25TH JANUARY, 2007.

P.C.:

1. By this application, the original complainant wife seeks cancellation of bail granted to respondent Nos. 1 to 7 by the Judicial Magistrate First Class, Thane in connection with C.R.No.1-361 of 2006.

2. At the outset, Shri.Das, learned advocate appearing for the applicant wife states that he does not press this application as against respondet Nos. 2,4,5 &

6. In other words, he does not press the application for cancellation of bail in favour of the woman accused. However, he presses this application in so far as the first respondent husband, the brother in law respondent No.3 and the husband of sister in law, respondent No.7.

3. It is the contention of Shri.Das that the C.R. was registered on 12th August, 2006 alleging offences punishable u/s.498A, 323, 504, 506 and 406 r/w. 34 I.P.C.

4. Respondent Nos.1 to 3 were arrested on 19th August, 2006 and produced before the J.M.F.C. on 20th August, 2006. They were remanded to Magisterial Custody till 1st September, 2006. However, on the same date i.e. on 20th August, 2006, the second respondent filed an application for bail and was enlarged on bail by the J.M.F.C. by an order passed on the same date. Thereafter, respondent Nos.1 to 3 applied for bail on 21st August, 2006. The learned A.P.P. had opposed the said application filed on their behalf. However, J.M.F.C. was pleased to release respondent Nos. 1 to 3 on bail by an order dated 22nd August, 2006. Later on, remaining accused i.e. respondent Nos. 4 to 7 applied for bail and despite remanding them to Magisterial Custody till 13th September, 2006, they were released on bail by an order

dated 30th August, 2006. All these orders are impugned in this application. Shri. Das submits that the learned J.M.F.C. was in error in releasing the respondents on bail. He submits that the order is arbitrary and vitiated by Non-application of mind. Merely because they are willing to return the Streedhan, does not mean that they should be enlarged on bail, more so, when serious offences are alleged to have been committed by them.

5. He has taken me through the FIR and contended that each one of the accused had been attributed a specific role. He submits that the marriage was solemnised in the year 2003 and the FIR was registered on 12th August, 2006. In the intervening period, several attempts at reconciliation filed. The allegations are of assault, harassment and ill treatment for dowry. In such circumstances, the bail deserves to be cancelled.

6. The application is opposed on behalf of the male accused. It is contended that the allegations are false in as much as the same are an after thought. The applicant wife had earlier lodged a complaint at Khar police station. She does not allege commission of cognizable offence much less harassment for demand of dowry. In these circumstances, her later act of lodging

FIR alleging demand of dowry is not bonafide but malafide. The brother of the applicant and her mother took away the applicant from the matrimonial home on 16th May, 2005. The marriage was solemnised wayback i.e. on 1st June, 2003. It is contended that there are no disputes in as much as the applicant was not willing to reside with her old mother-in-law. There were some petty quarrals and minor incidents which led to the applicant leaving the matrimonial home. In such circumstances and when there is no apprehension that the accused would misuse the liberty, this Court should not interfere with the order granting bail and proceed to cancel the bail granted to the accused.

7. The submissions of Shri.Pawar appearing for respondent Nos.1 to 3 are adopted by the advocate appearing for the other accused. On the last occassion, I had directed the learned A.P.P. orally to take instructions as to whether the chargesheet is filed. After taking instructions, Smt.Mhatre, learned APP makes a statement that the chargesheet is filed in this case in October, 2006 in the court of J.M.F.C., Thane.

8. After perusing the application and the annexures thereto, in my view, at this stage, it is not necessary to

enter into any larger controversy or cancelling the bail granted. More so, when the accused have been enlarged on bail on 12th August, 2006 and several attempts were made for reconciliation and overall settlement. The apprehension of the applicant that she would be threatened alongwith other witnesses and the evidence tampered with can be taken care of by imposing appropriate conditions. Further, the learned advocate appearing for the accused have agreed to the suggestion that the Streedhan, which is presently seized under the panchanama and lying with the police authorities be handed over to the applicant wife on usual terms including execution of a bond. The respondents are residing at Khar in Mumbai. They agree to abide by such conditions as are imposed by this Court in addition to the one stipulated in the order granting bail.

9. In these circumstances, in my view, interest of justice would be served at this stage, if the bail granted is not cancelled and the following conditions are imposed on the respondents before me. Needless to state that the applicant would be at liberty to apply for cancellation of bail afresh and point out to the appropriate Court the breach of conditions as also raise such pleas as are permissible in law to assail the order of the J.M.F.C. All such contentions of both sides are kept open. The

application is disposed of by the following order : -

a) Respondent Nos.1 to 7 shall not enter the limits of Naupada police station in Thane District till the conclusion of the trial. However, this does not prevent them from entering the limits of the said police station on the date of trial.

b) Respondent Nos.1 to 7 not to leave Mumbai without prior permission of the trial court.

c) The concerned J.M.F.C. to endeavour and dispose of the case as expeditiously as possible and in any event by 31st August, 2007.

d) Naupada police station to allow the applicant wife to take away Streedhan which has been seized under the panchanama and presently lying at the said police station. However, the Streedhan be handed over on usual terms including execution of a bond.

10. Application is disposed of.

(S.C.Dharmadhikari, J.)